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In the Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIV., AVCO CORP., PETITIONER

v.

UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA INTERNATIONAL UNION AND ITS LOCAL 787

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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38 pp

QUESTION PRESENTED

Whether Section 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. 185(a), which confers federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization," authorizes a suit in federal court to declare a collective bargaining agreement voidable because of fraud in the inducement.

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H. R. Conf. Rep. No. 510, 80th Cong., 1st Sess. (1947) 28
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Miscellaneous—Continued: Page

Restatement of Contracts (1932) 27
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Webster's New International Dictionary of the English Language (2d ed. unabridged 1958) 11
Samuel Williston, *A Treatise on the Law of Contracts* (Walter H.E. Jaeger ed. 1970) 14
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INTEREST OF THE UNITED STATES

As the agency responsible for administering and enforcing national labor policy, the National Labor Relations Board (NLRB) has a significant interest in the respective authority of the Board and the courts to decide issues relating to the enforceability of labor contracts.[1] This Court has specifically considered

[1] In response to the Court's invitations, the United States twice has filed briefs as amicus curiae at the petition stage, arguing that an employer's suit seeking declaratory relief based on a union's fraud in the inducement of a collective bargaining agreement is not within the NLRB's exclusive jurisdiction and may be brought under Section 301. *International Union of Operating Engineers Local No. 12* v. *Wilson*, No. 91-4 (U.S. Br. at 8-9), cert. denied, 505 U.S. 1212 (1992);

the NLRB's views in determining whether matters relating to collective bargaining agreements are within the Board's exclusive jurisdiction. See *Amalgamated Ass'n of St. Employees* v. *Lockridge*, 403 U.S. 274, 298 n.8 (1971); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 198 (1962).

STATEMENT

1. The complaint in this case alleges the following facts. Respondents (UAW or the union) represent approximately 500 employees of petitioner (Textron) at Textron's plant in Williamsport, Pennsylvania. The UAW and Textron were parties to a collective bargaining agreement in effect from April 1, 1994, to April 1, 1997. Before negotiations for that contract commenced, the union asked Textron whether it planned to subcontract work that would otherwise be performed by members of the bargaining unit at the plant. The union also requested any written documents that Textron had prepared on the subject of subcontracting. The union twice repeated its request for information relating to subcontracting. During that time period, Textron did not disclose any information about plans to subcontract bargaining unit work. Pet. App. 2a-3a; J.A. 16-17.

During contract negotiations, the UAW renewed its request for any subcontracting plans. Textron's vice president for human resources, Frank Ratchford, stated to union negotiators that he knew of no such plans, and he promised to make sure that his knowledge was complete. Neither Ratchford nor any other Textron official raised the issue of subcontracting again during the negotiations. The parties then entered into the aforesaid collective

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Local Freight Drivers, Local 208 v. *Rozay's Transfer*, No. 88-535 (U.S. Br. at 6-14), cert. denied, 490 U.S. 1030 (1989).

bargaining agreement. Pet. App. 3a; J.A. 17-18. The agreement provides for arbitration of any unsettled grievances (J.A. 8-9) and prohibits the union from engaging in any "strikes * * * or other similar interruptions of, or interferences with, work * * * for any reason" (J.A. 12).

During the negotiations leading up to the agreement, Textron secretly developed a plan to subcontract some of the bargaining unit work. After the UAW membership ratified the collective bargaining agreement, Textron's subcontracting plan was presented to and approved by Textron's Board of Directors. The UAW at that time first learned of the existence of the subcontracting plan and that the plan would result in loss of the jobs of approximately half of the bargaining unit employees. Pet. App. 3a; J.A. 18.

2. In November 1994, the union filed an unfair labor practice charge with the National Labor Relations Board (NLRB). J.A. 23. In April 1996, the NLRB's Regional Director issued a complaint alleging that Textron had failed to apprise the UAW during contract negotiations of its plans to subcontract bargaining unit work and failed to bargain in good faith about that subject, in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. 158(a)(1) and (5) (NLRA). J.A. 23-27. The Regional Director's complaint is the subject of a tentative prehearing unilateral settlement between the Regional Director and Textron, to which the UAW has filed objections. Pet. 5; Resp. Br. in Opp. 4 n.3.

3. In November 1995, the UAW filed a complaint in federal district court, alleging that Textron fraudulently induced the UAW to enter into the collective bargaining agreement. The union asserts that, had it known of Textron's subcontracting plan

when the union was still free to strike, the union would not have entered into the agreement or would have employed a different bargaining strategy. Pet. App. 3a; J.A. 18-19. The union requests "a declaratory judgment that the existing collective bargaining agreement between the parties is voidable at [the union's] option," as well as compensatory and punitive damages. J.A. 19. The complaint invokes (J.A. 16) the court's jurisdiction under Section 301(a) of the LMRA, which permits "[s]uits for violation of contracts between an employer and a labor organization." 29 U.S.C. 185(a).[2]

Textron moved to dismiss the complaint on the grounds that the court lacks jurisdiction under Section 301(a) and that the union failed to submit its claims to arbitration as required by the contract. The district court dismissed the complaint for lack of jurisdiction. Pet. App. 14a-18a. It reasoned that because the union's suit "turns solely on an alleged violation of good faith bargaining" and is "independent of the terms of the contract," the union's claims are within the exclusive jurisdiction of the NLRB. *Id.* at 17a, 18a.

4. The court of appeals reversed. Pet. App. 1a-13a. The court observed (*id.* at 6a-8a) that it had previously held in *Mack Trucks, Inc.* v. *International Union, UAW*, 856 F.2d 579, 586-588 (1988), cert. denied, 489 U.S. 1054 (1989), that an employer may

[2] Section 301(a) provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. 185(a).

bring suit under Section 301(a) for a declaratory judgment upholding the validity of a collective bargaining agreement. The court explained that the purpose of Section 301(a)—that "courts resolve disputes of a contractual nature, including disputes over the agreement's very existence"—equally applies "when the party who files suit seeks a declaration that the agreement is not enforceable." Pet. App. 10a. The court also observed that Section 301(a) clearly would allow a court to decide the union's allegation of fraudulent inducement if it had been raised as an affirmative defense in an action brought by Textron to enforce the agreement. Hence, the court reasoned that "the development of a consistent body of law in this area depends, in part, on federal court jurisdiction over all claims of a contractual nature, no matter who first resorts to court." *Ibid.*

The court of appeals also rejected Textron's argument that the suit was beyond the scope of Section 301(a) because "the UAW's claims stem from the *negotiation* of the agreement, [and] not from an alleged violation of the terms of the agreement itself." Pet. App. 11a. The court recognized that "federal courts lack Section 301 jurisdiction over challenges to contracts on the basis that they conflicted with the NLRA or some other external agreement." *Id.* at 12a (quoting *Beverly Enterprises-Pennsylvania, Inc.* v. *District 1199C, Nat'l Union of Hosp. Employees*, 90 F.3d 93, 95 (3d Cir. 1996)). The court explained that the union's suit for fraud in the inducement, however, "arises not out of the NLRA or another contract, but out of the collective bargaining agreement itself." *Ibid.* The court further reasoned that

> [t]he claim alleges flaws in the basic formation of the collective bargaining agreement, and its resolution is integral to the question whether

> the agreement is enforceable. In other words, Textron's allegedly fraudulent conduct goes to the heart of the enforceability of the collective bargaining agreement between the parties.

Ibid. Accordingly, the court concluded that "even if the UAW's claim could arguably constitute an unfair labor practice under * * * the NLRA, the UAW's claim is not solely a claim under the NLRA, and is subject to the concurrent jurisdiction of both the federal district courts and the NLRB." *Id.* at 13a.[3]

SUMMARY OF ARGUMENT

A. Section 301(a), which authorizes "[s]uits for violation of contracts," is properly interpreted to encompass suits for a declaratory judgment that a labor contract is voidable based on fraud in the inducement. A controversy over whether a contract has been or would be violated necessarily implicates the question of the enforceability *vel non* of a contract (unless enforceability is uncontested). Moreover, nothing in the statutory text or history of Section 301(a) precludes a court from exercising its authority under the Declaratory Judgment Act, 28 U.S.C. 2201(a). That Act permits a court to award declaratory relief in a case of "actual controversy" within its jurisdiction. Hence, because a court would have jurisdiction under Section 301(a) over an enforcement action alleging violation of a labor contract, a court may issue a declaratory judgment that the contract is unenforceable under Section 301(a). That conclusion properly effectuates the

[3] The court of appeals remanded the case to the district court with instructions to consider Textron's alternative contention that the complaint should be dismissed because the union failed to exhaust the contractual grievance procedures before filing suit. Pet. App. 13a n.4.

object of declaratory relief to ascertain a party's rights in advance of a violation of law, as well as the purpose of Section 301(a) to provide a judicial forum for the peaceful resolution of contract disputes.

B. The availability of declaratory relief under Section 301(a) is necessary to assure the development of uniform and comprehensive federal standards for the formation, application, and enforcement of labor contracts. Fraud in the inducement is a traditional contract defense that may be raised in a breach-of-contract action brought under Section 301(a). Federal law should govern the validity of that defense, regardless of whether the party asserting it is a defendant or a plaintiff. A contrary result would mean that the forum for a dispute, and possibly the applicable law, would depend on which party files suit.

Contrary to petitioner's contentions, Section 301(a) permits a court to determine the enforceability of collective bargaining agreements, and under basic contract principles the question whether an agreement is validly formed is central to the issue of the agreement's enforceability. Moreover, the need for a uniform and inclusive body of federal law under Section 301(a) applies as much to the resolution of a claim of fraud in the inducement as to the interpretation of a particular term of a collective bargaining agreement.

C. Respondents' suit would not unduly conflict with the Board's authority to resolve unfair labor practice disputes. The suit does not assert a statutory violation of the NLRA; rather, it raises a traditional contract defense that should be entertained by a court as well as by the Board. Finally, there is no unwarranted conflict between respondents' suit under Section 301(a) and the pending administrative proceeding before the Board.

ARGUMENT

SECTION 301(a) AUTHORIZES A COURT TO DECLARE A COLLECTIVE BARGAINING AGREEMENT VOIDABLE FOR FRAUD IN THE INDUCEMENT

In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959), this Court articulated the general rule that "[w]hen an activity is arguably subject to [Section] 7 or [Section] 8 of the [National Labor Relations] Act, the States as well as the federal courts must defer to the *exclusive* competence of the National Labor Relations Board." The court of appeals and the parties all acknowledge that fraudulently inducing an employer or a union to enter into a collective bargaining agreement is arguably an unfair labor practice subject to the NLRA. That assumption is well founded. The Board has determined that fraudulent concealment in bargaining over plant relocations, subcontracting, and comparable matters is an unfair labor practice under Sections 8(a)(1) and (5) of the NLRA.[4] Thus, a claim of fraud in the inducement of a collective bargaining agreement is within the scope of *Garmon*'s general rule.[5]

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[4] See, *e.g.*, *ILGWU* v. *NLRB*, 463 F.2d 907, 917, 921-923 (D.C. Cir. 1972); *AMCAR Div., ACF Indus., Inc.* v. *NLRB*, 592 F.2d 422, 425-426, 429-431 (8th Cir. 1979); *Penntech Papers, Inc.* v. *NLRB*, 263 N.L.R.B. 264, 265, 276-277 (1982), enforced, 706 F.2d 18, 27 (1st Cir.), cert. denied 464 U.S. 892 (1983). The remedies that the Board has ordered include rescission of the fraudulently induced contract (*Waymouth Farms*, 324 N.L.R.B. No. 151 at 3 (Oct. 31, 1997)) and monetary relief to the wronged party for the costs of negotiating on a false basis (*O'Neill, Ltd.*, 288 N.L.R.B. 1354, 1356-1357 (1988), enforced, 965 F.2d 1522 (9th Cir. 1992), cert. denied, 509 U.S. 904 (1993)).

[5] Most federal courts, applying *Garmon*, have concluded that state law fraud claims are preempted by the NLRA because fraud in the inducement is arguably an unfair labor practice. See, *e.g.*, *Parker* v. *Connors Steel Co.*, 855 F.2d 1510, 1515-1518 (11th Cir. 1988), cert. denied, 490 U.S. 1066 (1989); *Serrano* v. *Jones & Laughlin Steel Co.*, 790 F.2d 1279, 1286-1288 (6th Cir. 1986); *Kolentus* v. *Avco Corp.*, 798 F.2d 949, 960-962 (7th Cir. 1986), cert. denied, 479 U.S. 1032 (1987); but cf. *Operating Engineers Pension Trust* v. *Wilson*, 915 F.2d, 535, 538-540 (9th Cir. 1990) (no preemption when contract not enforceable by Board), cert. denied, 505 U.S. 1212 (1992) (discussed note 16, *infra*).

This Court has explained, however, that *Garmon*'s "pre-emption doctrine * * * has never been rigidly applied to cases where it could not fairly be inferred that Congress intended exclusive jurisdiction to lie with the NLRB." *Vaca* v. *Sipes*, 386 U.S. 171, 179 (1967). Indeed, in conferring court jurisdiction over suits encompassed within Section 301(a) of the LMRA, "Congress itself * * * carved out [an] exception[] to the Board's exclusive jurisdiction." *Ibid.*[6] A court therefore may adjudicate a contract suit properly brought under Section 301(a) even though the conduct at issue also may constitute an unfair labor practice prohibited by the NLRA. *Id.* at 179-180; accord *William E. Arnold Co.* v. *Carpenters Dist. Council*, 417 U.S. 12, 15-18 (1974); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 197 (1962); *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 101 n.9 (1962).

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[6] Congress elsewhere has authorized suits involving activity otherwise remediable by the NLRB. See 29 U.S.C. 187 (suits for injury to business or property by activity violating Section 8(b)(4) of the NLRA, 29 U.S.C. 158(b)(4)). Additionally, this Court has recognized exceptions to the Board's exclusive jurisdiction over labor disputes. See *Garmon*, 359 U.S. at 243-244; *Breininger* v. *Sheet Metal Workers Local No. 6*, 493 U.S. 67, 83-84 (1989) (federal courts have jurisdiction under 28 U.S.C. 1337 over duty of fair representation cases).

These background principles are entirely consistent with our contention that Section 301(a), when read in conjunction with a court's authority under the Declaratory Judgment Act, 28 U.S.C. 2201(a), encompasses a suit to declare a collective bargaining agreement voidable based on fraud in the inducement. Accordingly, the district court had jurisdiction over respondents' suit, regardless of whether the allegedly fraudulent conduct constitutes an unfair labor practice remediable by the Board.

A. A Court Has Authority Under Section 301(a) To Render a Declaratory Judgment

1. Section 301(a) confers jurisdiction on federal courts to hear "[s]uits for violation of contracts" between employers and unions. That language does not compel the restrictive interpretation urged by petitioner (Pet. Br. 20-23, 31-34). As the Third Circuit has explained: "The precise meaning of 'suits for violation of contracts' in [Section] 301(a) is unclear, and Congress did not define it in the LMRA." *Mack Trucks, Inc.*, 856 F.2d at 586.

This Court has indicated that "[Section] 301 is not to be given a narrow reading." *Evening News Ass'n*, 371 U.S. at 199; *Franchise Tax Bd.* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 25 n.28 (1983) ("We have not taken a restrictive view of who may sue under [Section] 301 * * * or of what contracts are covered by [Section] 301.") (citations omitted); see also Robert A. Gorman, *Basic Text on Labor Law* 546 (1976) ("[t]he Court has * * * given a broad and hospitable interpretation to the terms of section 301 itself").

Consistent with that principle, Section 301(a)'s grant of jurisdiction over "[s]uits for violation of contracts" may properly be interpreted to authorize

not only suits alleging a past violation of contract, but also suits seeking a declaratory judgment that a party would not be liable for a violation of contract under Section 301(a) because that contract is unenforceable. The ordinary understanding of the word "for," as used in the statutory phrase, is broad enough to encompass not only a suit that "alleges" a violation of contract,[7] but also one that concerns a violation of contract, or is intended to establish a legal right to engage in what otherwise would be a contract violation.[8] Accordingly, "[s]uits for violation" of contracts under Section 301(a) is textually broad enough to include suits by parties, such as respondents, for declaratory relief that their obligations under a labor agreement are voidable because of fraud in the inducement.

In any event, nothing in the plain language of Section 301(a) prohibits a court from exercising its

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[7] Such a suit is clearly authorized by Section 301(a), as was made even more evident by the language of a predecessor bill, Section 10 of the Case bill, which authorized "a suit for damages for [a] breach" of a labor contract. *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 487 (1957) (Frankfurter, J., dissenting) (citing H.R. 4908, 79th Cong., 2d Sess. (1946)). That language was "slightly recast" when Congress enacted Section 301(a). *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 511 (1962).

[8] *Webster's New International Dictionary of the English Language* 984 (2d ed. unabridged 1958) (defining "for" as "[a]s a preparation towards * * * in view of; having as goal or object; * * * in order to effect"; "[a]s regards; concerning; * * * in respect to"); accord *The Random House Dictionary of the English Language* 747 (2d ed. unabridged 1987) (defining "for" as "with the object or purpose of"; "in order to obtain, gain, or acquire: *a suit for alimony*"); 6 *The Oxford English Dictionary* 23, 26 (2d ed. 1989) (defining "for" as "[w]ith a view to; with the object or purpose of: as preparatory to"; "[a]s regards, with regard or respect to, concerning").

authority under the Declaratory Judgment Act, which authorizes federal courts "[i]n a case of actual controversy within its jurisdiction * * * [to] declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. 2201(a). Indeed, in enacting Section 301(a), Congress specifically contemplated that suits would be brought "under the Declaratory Judgments Act in order to secure declarations from the [c]ourt of legal rights under the contract." *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 456 (1957) (quoting 93 Cong. Rec. 3656 (1947) (remarks of Rep. Barden)). Moreover, in *Franchise Tax Board*, 463 U.S. at 25 n.28, this Court noted with approval the Second Circuit's decision in *Black-Clawson Co.* v. *International Ass'n of Machinists Lodge 355*, 313 F.2d 179, 181-182 (2d Cir. 1962), in which the court of appeals held that a suit for declaratory judgment concerning a party's obligations under a labor contract may be brought under Section 301(a).[9] Accordingly, the text and history of Section 301(a) permit a court to award declaratory relief.

2. Respondents' suit seeking a declaration that a collective bargaining agreement is unenforceable under Section 301(a) is a paradigmatic application of the Declaratory Judgment Act. That Act permits a federal court to grant declaratory relief "whenever a declaration is sought that the defendant does not have a federal right." 10A Charles A. Wright, Arthur

[9] In *Black-Clawson Co.*, the Second Circuit held that an employer could bring a Section 301(a) suit for a declaratory judgment that would determine the employer's obligations to arbitrate under a collective bargaining agreement. In so holding, the court of appeals rejected the decisions of other courts that had construed Section 301(a) to authorize only suits alleging a violation of a contract. 313 F.2d at 181.

R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2767, at 740 (2d ed. 1983); see also *id.* at 745 ("if the federal issue would inhere in the claim on the face of the complaint that would have been presented in a traditional damage or coercive action, then federal jurisdiction exists over the declaratory judgment action"); *Public Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 248 (1952) (noting in dictum that "the character of the threatened action * * * determine[s] whether there is federal-question jurisdiction in the District Court"). Thus, "[f]ederal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question." *Franchise Tax Bd.*, 463 U.S. at 19.[10]

So here, as petitioner recognizes (Pet. Br. 7), respondents filed the instant suit "in order to credibly threaten to strike" (Pet. Br. 7), *i.e.*, engage in conduct that otherwise would violate the contract's no-strike clause. J.A. 12. If, instead of filing suit, respondents had struck once petitioner's subcontracting plans were revealed, and had *petitioner* then filed suit under Section 301(a) against respondents for violating the contract, respondents could have asserted fraud in the inducement as a defense to the suit. *Inter-*

[10] "For instance, federal courts have consistently adjudicated suits by alleged patent infringers to declare a patent invalid, on the theory that an infringement suit by the declaratory judgment defendant would raise a federal question." *Franchise Tax Bd.*, 463 U.S. at 19 n.19; see also *Walker Process Equip., Inc.* v. *Food Mach. & Chemical Corp.*, 382 U.S. 172, 176 (1965) (a patent's validity may be challenged "on various grounds, including fraudulent procurement," and "the validity of the patent may be tested under the Declaratory Judgment Act, 28 U.S.C. 2201").

national Bhd. of Teamsters, Local 952 v. *American Delivery Serv. Co.*, 50 F.3d 770, 774 (9th Cir. 1995) ("Fraud in the inducement is an issue that may be interposed as a traditional contract defense in an action for breach of a CBA."); Pet. Br. 29 ("before enforcing an agreement, courts must adjudicate affirmative defenses such as fraud based upon conduct occurring in the collective bargaining process"); see generally *Restatement (Second) of Contracts* §§ 159-164 (1981); 12 Samuel Williston, *A Treatise of the Law of Contracts* §§ 1486-1488 (Walter H.E. Jaeger ed. 1970).

Respondents' suit for declaratory relief presents exactly the same legal question as would a coercive enforcement suit brought under Section 301(a), *i.e.*, whether the parties' collective bargaining agreement, including its no-strike clause, is valid and enforceable. The only difference is that the procedural posture of the parties is reversed.[11] Thus, because the district court would have jurisdiction under Section 301(a) over precisely the same question if petitioner had filed suit to enforce the collective bargaining agreement upon a breach by respondents, the court has jurisdiction over respondents' suit seeking a declaratory judgment that petitioner's rights under the agreement do not exist.

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[11] As explained by Professor Borchard, a proponent and author of the Declaratory Judgment Act, "[t]he authorization to, or exercise by, the courts of the privilege of determining the legal rights of the parties, without a supplemental coercive decree, would, while enabling them to afford relief upon some operative facts and interests not now capable of legal protection, nevertheless constitute changes in procedure only." Edwin Borchard, *Declaratory Judgments* 21 (2d ed. 1941).

Petitioner suggests (Pet. Br. 31, 32 n.21) that although declaratory relief may be appropriate if a party brings a suit to declare an agreement *enforceable* in response to an anticipatory repudiation (see, *e.g.*, *Charles Dowd Box Co.* v. *Courtney*, 368 U.S. 502, 503-504 (1962)), it is not available if a party files suit to declare the agreement *unenforceable*. This Court has stated, however, that "[i]t is the nature of the controversy, not the methods of its presentation or the particular party who presents it, that is determinative." *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 244 (1937). Thus, when the legal question at issue is the enforceability *vel non* of a collective bargaining agreement, the availability of declaratory relief under Section 301(a) does not turn on whether the party asserting that the contract is enforceable is the plaintiff or the defendant. See *Franchise Tax Bd.*, 463 U.S. at 19 n.19 ("the nature of the declaratory remedy * * * was designed to permit adjudication of either party's claims of right"); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941) ("It is immaterial that * * *, in the declaratory judgment suit, the positions of the parties in the conventional suit are reversed; the inquiry is the same in either case."); see also *Black-Clawson Co.*, 313 F.2d at 182 ("The issues of fact and of law to be determined by the court are the same, whether the complaint alleges a violation of the contract * * * or whether it alleges compliance with the contract and requests protection by declaratory judgment.").

3. The availability of declaratory relief in this case under Section 301(a) is supported by the "strong presumption that favors access to a neutral forum for the peaceful resolution of disputes," *Groves* v. *Ring Screw Works, Ferndale Fastener Div.*, 498 U.S. 168, 173 (1990), and by the central purpose of

the Declaratory Judgment Act to "permit[] actual controversies to be settled before they ripen into violations of law or a breach of contractual duty." Wright, Miller & Kane, *supra*, § 2751, at 570; see also Borchard, *supra*, at 943-944 ("a plaintiff often claims release from a contract by way of anticipatory defense on the ground that the contract was obtained from him by fraud or misrepresentation," because of "[t]he risk of acting upon his own belief that he is discharged from further performance"). It is axiomatic that under modern practice, with the availability of declaratory relief, "a party to a contract is not compelled to wait until he has committed an act which the other party asserts will constitute a breach, but may seek relief by declaratory judgment and have the controversy adjudicated in order that he may avoid the risk of damages or other untoward consequence." *Keener Oil & Gas Co.* v. *Consolidated Gas Utils. Corp.*, 190 F.2d 985, 989 (10th Cir. 1951).

This case well illustrates the reasons why parties have been enabled to ascertain their legal rights under a contract without first having to breach it. Under petitioner's restrictive view, respondents could not invoke a court's authority under Section 301(a) to adjudicate their claim for fraud in the inducement unless respondents first initiated a strike (or engaged in other conduct that violates the agreement) and then petitioner brought a coercive enforcement action for damages.[12] That result "comport[s] neither with the streamlined procedural policy embodied in the declaratory judgment proceeding nor with the strong concern embodied in sec-

[12] In addition to obtaining damages for an illegal strike, an employer may discharge employees engaging in the strike. *Atkinson* v. *Sinclair Refining Co.*, 370 U.S. 238, 246 (1962).

tion 301 for the enforcement of collective bargaining agreements and the peaceful resolution of contract disputes between labor and management." *Black-Clawson Co.*, 313 F.2d at 182.

B. Respondents' Suit For Declaratory Relief Under Section 301(a) Furthers The Statute's Goals Of Uniformity And Comprehensiveness In The Federal Substantive Law Governing Labor Agreements

1. The availability of suits for declaratory relief under Section 301(a) is necessary to ensure consistent application of the federal substantive law of collective bargaining agreements under the statute. In *Lincoln Mills*, 353 U.S. at 450-451, the Court held that Section 301(a) is not merely a jurisdictional statute that defines a class of suits subject to adjudication in federal courts. Rather, the Court stated that Section 301(a) "authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements." *Id.* at 451. That body of law is to be based upon "the policy of our national labor laws," including the terms of federal statutes, the policy and background of that legislation, and other sources that commend themselves to "judicial inventiveness." *Id.* at 456-457.

In its subsequent decisions, the Court has construed Section 301(a) so as to assure that this body of law is consistently applicable to disputes arising under collective agreements. For example, in *Lucas Flour Co.*, *supra*, the Court held that Section 301(a) requires state courts to apply federal law to cases which, under that statute, could have been brought

in federal court. 369 U.S. at 103-104.[13] The Court explained:

> The dimensions of [Section] 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute. Comprehensiveness is inherent in the process by which the law is to be formulated under the mandate of *Lincoln Mills*, requiring issues raised in suits of a kind covered by [Section] 301 to be decided according to the precepts of federal labor policy.

Id. at 103.[14]

In keeping with this concern for "[c]omprehensiveness," this Court has extended the rule of preemption under Section 301(a) "beyond suits alleging contract violations." *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 210 (1985). In that case, an employee complained that his employer had acted in bad faith in processing a claim for disability benefits under a plan established by a collective bargaining agreement. Although under state law the employee's claim sounded in tort, not contract, the Court held that federal law was controlling. Invoking "policies that animate [Section] 301" (*ibid.*), the Court explained that "questions relating to what the parties to a labor

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[13] The Court in *Charles Dowd Box Co.*, *supra*, held that state courts may entertain suits over which federal courts would have jurisdiction under Section 301(a). 368 U.S. at 506.

[14] Indeed, because suits determining the meaning and application of collective bargaining agreements now arise solely under federal law, such cases are not subject to the traditional rule that federal preemption defenses must be determined initially in state court; rather, under the "complete preemption" doctrine, actions to enforce collective bargaining agreements always may be removed to federal court under 28 U.S.C. 1441(b). See *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 393-394 (1987); see also *Franchise Tax Bd.*, 463 U.S. at 24.

agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law." *Id.* at 211; see also *Caterpillar, Inc.* v. *Williams*, 482 U.S. 386, 394 (1987) ("Section 301 governs claims founded directly on rights created by collective-bargaining agreements, and also claims 'substantially dependent on analysis of a collective-bargaining agreement.'" (quoting *International Bhd. of Elec. Workers* v. *Hechler*, 481 U.S. 851, 859 n.3 (1987)).

As discussed pp. 13-14, *supra*, fraud in the inducement is a traditional contractual defense that can be interposed in a Section 301(a) action for breach of a collective bargaining agreement. The validity of such a defense is to be determined as a matter of federal substantive law. Cf. *Nash* v. *Trustees of Boston Univ.*, 946 F.2d 960, 965-966 (1st. Cir. 1991) (incorporating fraud in the inducement into federal substantive law under ERISA). Because a principal purpose of Section 301(a) is to provide a uniform and comprehensive body of federal law that is consistently applicable to "disputes arising out of labor contracts," *Allis-Chalmers*, 471 U.S. at 209, that Section should apply to suits seeking to invalidate contracts as much as to suits seeking to validate them. Any other result would mean that the forum for precisely the same dispute would depend on which of the parties to a labor agreement is at the top of the caption in a case in which fraud is the decisive issue.

The need for a comprehensive and uniform body of federal law governing labor contracts is particularly compelling when the conduct affecting the validity of such contracts is *not* subject to the Board's jurisdiction. For instance, labor agreements negotiated on behalf of retired employees are not enforceable through the Board's processes, but they are

enforceable under Section 301(a). *Allied Chem. & Alkali Workers, Local Union No.1* v. *Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20, 186-187 (1971). If parties to such labor agreements are denied declaratory relief under Section 301(a) for claims of fraud in the inducement, as they would be under petitioner's reading of the statute, the only available remedy would be a suit under state law.[15] The result would be that the validity of a labor agreement based on fraud in the inducement would be decided under *federal* law if the issue were raised as an affirmative defense in an enforcement action brought by the wrongdoer, but under *state* law if the contract's validity were challenged directly by the victim of fraud. A jurisdictional rule that produces anomalies of that sort would plainly undermine Section 301(a)'s objective of creating a uniform federal law for labor contracts, *Allis-Chalmers*, 471 U.S. at 211; *Lucas Flour Co.*, 369 U.S. at 103, and would recreate the kind of "checkerboard jurisdiction" that Section 301(a) was enacted to end, *Retail Clerks Int'l Ass'n* v. *Lion Dry Goods, Inc.*, 369 U.S. 17, 27 (1962).

2. In arguing that respondents' suit falls outside the scope of Section 301(a), petitioner asserts (Pet. Br. 26-29) that the statute encompasses only suits in which a court will interpret a particular provision of the parties' agreement. Petitioner similarly contends that respondents' suit, because it concerns a flaw in the formation of a collective bargaining agreement, "is not based upon contract" (Pet. Br. 34), but is essentially a tort claim for fraud (*id.* at 34-38). Those contentions lack merit.

[15] Because the claims in such suits are not "arguably" unfair labor practices under *Garmon*, 359 U.S. at 245, the suits likely would not be preempted by the NLRA. See *International Longshoremens Ass'n* v. *Davis*, 476 U.S. 380, 395 (1986) ("If the word 'arguably' is to mean anything, it must mean that the party claiming pre-emption is required to demonstrate that his case is one that the [NLRB] could legally decide in his favor.").

In authorizing "[s]uits for violation of contracts," Section 301(a), by its own terms, confers jurisdiction on federal district courts to determine the enforceability of labor contracts. A court cannot enforce a contract in the face of a breach by one of the parties if the contract or one of its terms is unenforceable *ab initio*. Thus, in order to exercise its jurisdiction over suits concerning contract violations, a court also must be able to determine the validity of the contract, whether the court expresses that determination implicitly or explicitly. As the Second Circuit has explained:

> It is axiomatic * * * that to determine whether a breach of agreement has occurred, a court must necessarily determine whether a valid agreement exists in the first place. Ancillary to determining the merits of an action for breach of a collective bargaining agreement, therefore, is the power to declare a purported agreement either invalid or binding. Not surprisingly, therefore, the Third, Fifth, Seventh, Ninth, Tenth and Eleventh Circuits all allow a district court to determine the validity of a collective bargaining agreement as part of the power to determine whether there has been a breach.

Kozera v. *Westchester-Fairfield Chapter of Nat'l Elec. Contractors Ass'n*, 909 F.2d 48, 52 (1990), cert. denied, 498 U.S. 1084 (1991).

The principle that jurisdiction to enforce necessarily includes jurisdiction *not* to enforce applies when a party asserts that a contract is voidable for fraud in the inducement. As the court of appeals concluded, "[petitioner's] allegedly fraudulent conduct goes to

the heart of the enforceability of the collective bargaining agreement between the parties," and thus respondents' suit arises "out of the collective bargaining agreement itself." Pet. App. 12a; see also *Nash*, 946 F.2d at 966 (fraud in the inducement relates to "the most elemental prerequisite to the formation of an enforceable contract—the meeting of the minds"); *Operating Engineers Pension Trust* v. *Wilson*, 915 F.2d, 535, 541 (9th Cir. 1990) (Canby, J., dissenting) ("To hold that a collective bargaining agreement means nothing—that it is invalid—is the most radical form of construction."), cert. denied, 505 U.S. 1212 (1992).[16] Thus, the fact that respondents' suit concerns conduct occurring before the contract

[16] In *Wilson*, the Ninth Circuit held that a "state tort claim for fraud in the inducement is not preempted by Section 301 because it does not require reference to the collective bargaining agreement." 915 F.2d at 539. As we explained in our amicus brief filed at the petition stage in that case (91-4 U.S. Br. at 12-14) the court of appeals in *Wilson* erred in relying on *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 413 (1988), in which this Court held that "an application of state law is preempted by [Section] 301 * * * only if such application requires the interpretation of a collective-bargaining agreement." Additionally, since *Lingle*, this Court has indicated that "it is the legal character of a claim, as 'independent' of rights under the collective-bargaining agreement, * * * that decides whether a state cause of action may go forward." *Livadas* v. *Bradshaw*, 512 U.S. 107, 123-124 (1994) (quoting *Allis-Chalmers*, 471 U.S. at 213)). As described in the text, far from being "independent" of the collective bargaining agreement, respondents' suit concerns the enforceability of the collective bargaining agreement and is inexorably tied to the parties' legal rights and obligations under it. Accordingly, a uniform body of federal law should govern the dispute, regardless of which party seeks to declare the contract voidable.

was executed does not render the suit beyond the statute's scope.[17]

Moreover, Congress enacted Section 301(a) so that courts would "enforce * * * agreements on behalf of or against labor organizations," *Lincoln Mills*, 353 U.S. at 455, and a consistent body of law would govern any "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement," *Allis-Chalmers*, 471 U.S. at 211. The need to ensure uniformity in federal law applicable to "disputes arising out of labor contracts," *id.* at 209, applies with equal force whether the issue is the meaning of particular contract terms, or is whether the contract was validly formed in the first place.

Amalgamated Ass'n of Street Employees v. *Lockridge*, 403 U.S. 274, 300-301 (1971), on which petitioner relies (Pet. Br. 37-38), is not to the contrary. In that case, the Court held that a former union member's suit against the union for an alleged breach of an implied-in-law term in the union's contract with the member was subject to the Board's exclusive jurisdiction under *Garmon*. 403 U.S. at 291-294. In rejecting the employee's contention that the suit could be maintained under Section 301(a), the Court reasoned that the employee had dropped the employer from the complaint, and the employee had not shown a breach of the union's duty of fair representation that otherwise might render *Garmon* preemption inapplicable. *Id.* at 299-300. Thus, the Court's statement in *Lockridge*

[17] Indeed, *Charles Dowd Box Co.* involved a suit brought under Section 301(a) that centered on pre-contract conduct. In that case, the union had filed suit to enforce a labor agreement in response to the employer's contention that the union had acted without authority in negotiating the agreement. 368 U.S. at 503-504.

that Section 301(a) applies "only to those disputes that are governed by the terms of the collective-bargaining agreement itself," *id.* at 301, did not purport to address a suit between an employer and a union regarding whether a collective bargaining agreement—because it may be voidable for fraud in the inducement—provides any terms at all. Indeed, the Court expressly recognized that "courts should be free to interpret *and enforce* collective-bargaining agreements." *Id.* at 300 (emphasis added).

Moreover, as the facts of this case demonstrate, a claim of fraud in the inducement often is intertwined with questions about the terms of a collective bargaining agreement. For example, petitioner asserts (Pet. Br. 4, 31) that the parties' collective bargaining agreement incorporated a February 2, 1994, Memorandum of Agreement that permitted petitioner to subcontract bargaining unit work after notice and discussion with respondents (J.A. 13-15). That provision of the collective bargaining agreement, and the parties' experience under it, may bear on respondents' allegation that they relied on petitioner's misprepresentations in assenting to the terms of the collective bargaining agreement. See J.A. 18-19.[18] Thus, in

[18] Moreover, the agreement contains a mandatory grievance procedure, which defines grievances "as any alleged violation of the terms of this Agreement or differences of opinion as to its interpretation or application" and limits the jurisdiction of the arbitrator "to the interpretation or application of the terms of this Agreement" J.A. 7, 9. Whether respondents' claim of fraud in the inducement is subject to those provisions is an issue for the district court to resolve on remand. See note 3, *supra*; cf. *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U.S. 643, 649 (1986) ("the question of arbitrability—whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance—is undeniably an issue for judicial determination" under Section 301(a)).

resolving whether to declare a collective bargaining agreement voidable based on fraud in the inducement, a court will often be required to interpret the agreement's terms and to consider how those terms would apply to the parties' dispute.

C. Respondents' Suit under Section 301(a) Does Not Unduly Conflict With The Board's Jurisdiction

Petitioner argues (Pet. Br. 26-34) that a claim for fraud in the inducement should be within the exclusive jurisdiction of the Board under the NLRA and that an action raising that claim under Section 301(a) would present an unwarranted intrusion upon the Board's authority. We disagree.

1. Petitioner initially errs in relying (Pet. Br. 26-30) on the mere existence of the Board's jurisdiction to regulate and remedy misconduct during the collective bargaining process. As discussed *supra*, pp. 8-9, a court may have jurisdiction under Section 301(a) even though the conduct at issue is an unfair labor practice under the NLRA. To be sure, some conflict is inevitable in that statutory scheme. See *Charles Dowd*, 368 U.S. at 514 ("It is implicit in the choice Congress made that 'diversities and conflicts' may occur * * * as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke.").[19] Judicial

[19] A variety of means have been developed to address the conflicts inherent whenever a court exercises concurrent jurisdiction under Section 301(a). For example, courts are not required to defer to the Board's interpretation of a collective bargaining agreement. *Litton Fin. Printing Div.* v. *NLRB*, 501 U.S. 190, 202 (1991). Similarly, "[t]he Board has, on prior occasions, declined to exercise its jurisdiction to deal with unfair labor practices in circumstances where, in its judgment,

resolution of the present controversy, however, would not constitute "an unprecedented intrusion upon both the substantive and the remedial authority of the Board." Pet. Br. 33. A suit *challenging* the enforceability of a labor contract based on fraud in the inducement poses no potential for conflict that would not otherwise be present if the opposing party had brought a coercive enforcement action *asserting* the contract's enforceability.

We do not mean to suggest that any defense to a contract action should provide the basis for an action under Section 301(a). For instance, we do not believe that Section 301(a) should be interpreted to authorize a suit asserting a statutory claim that Congress has committed to the Board's primary jurisdiction, with contractual issues only tangentially involved. See, *e.g.*, Pet. App. 12a (distinguishing between claims "aris[ing] * * * out of the NLRA" and "the collective bargaining agreement itself"); *Nielsen* v. *International Ass'n of Machinists & Aerospace Workers, Local Lodge 2569*, 94 F.3d 1107, 1117 (7th Cir. 1996)

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federal labor policy would best be served by leaving the parties to other processes of the law." *Smith* v. *Evening News Ass'n*, 371 U.S. at 198 n.6. Courts conversely have stayed judicial proceedings to prevent possible conflicts with the Board and have given collateral estoppel effect to factual findings made by the Board. See *Martin* v. *Garman Constr. Co.*, 945 F.2d 1000, 1002-1006 (7th Cir. 1991), cert. denied, 502 U.S. 1122 (1992). Moreover, damages awarded under Section 301(a) are reduced by any duplicative monetary relief ordered by the Board. See, *e.g.*, *Phelan* v. *Local 305, United Ass'n of Journeymen*, 973 F.2d 1050, 1063-1064 (2d Cir. 1992) (duty of fair representation case). Finally, a court has "substantial discretion" whether to award declaratory relief, *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995), and a court may decline to award such relief if it would unduly conflict with a pending administrative proceeding. See E. Borchard *Declaratory Judgments*, 248-249.

(suit by employees to challenge labor agreement as violating Section 8(a)(3) of the NLRA, 29 U.S.C. 158(a)(3)), cert. denied, 117 S. Ct. 1426 (1997); *Hernandez* v. *National Packing Co.*, 455 F.2d 1252 (1st Cir. 1972) (suit by employees alleging agreement was invalid because union no longer had majority support); cf. *Communications Workers* v. *Beck*, 487 U.S. 735, 743 (1988) (employees may not "circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation").[20]

Fraud in the inducement, however, is not uniquely a matter within the Board's administrative expertise. It is a traditional contract doctrine with which courts have a long familiarity, a familiarity that had developed even before the NLRB was created and the failure to bargain in good faith became an unfair labor practice. See *Restatement of Contracts* § 470 *et seq.* (1932). The Board, accordingly, has concluded in this and other cases (see note 1, *supra*) that a suit under Section 301(a) to declare a contract voidable based on fraud in the inducement does not unduly intrude upon its authority under the NLRA.

2. Nor is there reason why the Board should have exclusive jurisdiction in this particular case simply because respondents have filed unfair labor practice charges before the Board. In enacting Section 301(a), Congress intended to afford the parties to collective

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[20] The precise line between disputes exclusively for the Board and those that may be brought both to the Board and to the courts need not be determined in this case. We think it clear, in any event, that the line is not the one for which petitioner contends—which would limit courts to cases in which a party alleges a prior violation of contract—and that a declaratory judgment action alleging fraud in the inducement is one which is suitable for the courts.

bargaining agreements a judicial forum for the resolution of labor disputes, "even though an alternative remedy before the Board is available." *Carey* v. *Westinghouse Elec. Corp.*, 375 U.S. 261, 268 (1964); see also *Allis-Chalmers*, 471 U.S. at 209; *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554, 561-562 (1976). Indeed, the history of Section 301(a) confirms that Congress anticipated that two tribunals could award relief based on the same conduct. In 1947, when the NLRA was amended and new federal judicial remedies, including Section 301(a), were added, Congress removed the term "exclusive" from the description of the Board's jurisdiction over unfair labor practices under Section 10(a) of the NLRA, 29 U.S.C. 160(a), but retained language which provides that the Board's power over unfair labor practices "shall not be affected by any other means of adjustment or prevention." Compare National Labor Relations Act, ch. 372 § 10(a), 49 Stat. 453 with ch. 120, § 10(a), 61 Stat. 146. That change "makes clear that, when two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." H.R. Conf. Rep. No. 510, 80th Cong., 1st Sess. 52 (1947).

Moreover, contrary to petitioner's suggestion (Pet. Br. 32-33), respondents' suit is not coextensive with the unfair labor practice charge filed before the Board. As the court of appeals explained (Pet. App. 13a n.3), "[w]hile the claims of bad faith bargaining and of fraudulent inducement may overlap both factually and legally, they are not identical." Thus, regardless of whether petitioner is correct in asserting (Pet. Br. 34 n.22) that it was not subject to any duty under the NLRA to bargain in good faith or to supply information regarding its subcontracting plans, respondents may be able to establish under

traditional contract principles that their agreement with petitioner is voidable because of petitioner's allegedly fraudulent conduct during the formation of the contract.

Petitioner further errs in contending (Pet. Br. 33) that, "[s]hould the union prevail [in court], a conflict in the remedies is virtually certain." Under the tentative settlement agreement between petitioner and the Board's Regional Director (Pet. Br. 6 n.4), petitioner must, *inter alia*, remit back pay to enumerated employees and bargain in good faith about subcontracting. That administrative settlement is entirely consistent with respondents' suit under Section 301(a) for a declaratory judgment that the agreement is voidable at respondents' option.[21] Thus, declaratory relief in this case would not conflict with the administrative proceeding before the Board.

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[21] The United States has confined its discussion in this brief to the question presented in the petition for certiorari, which this Court granted. Respondent's complaint, however, also includes damages claims (J.A. 19), which neither court below has addressed. Cf. *Local Freight Drivers, Local 208* v. *Rozay's Transfer*, 850 F.2d 1321, 1335 (9th Cir. 1988), cert. denied, 490 U.S. 1030 (1989).

The certiorari petition also noted (Pet. 4, n.4) that the terms of the collective bargaining agreement had expired by the time certiorari was sought. Under the NLRA, some terms of an expired contract can continue to impose obligations on the parties that govern their post-expiration conduct. See, *e.g.*, *Litton Fin. Printing Div.*, 501 U.S. at 198, 206-207. Because any question of possible mootness of this case would depend upon factual developments subsequent to the closing of the record below, that is a matter appropriately addressed by the parties rather than by the United States as amicus curiae.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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